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JUN 25 2008

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE



STATE OF WASHINGTON APPLICATION TO ENTER A WATER RIGHT INTO THE TRUST WATER RIGHT PROGRAM

NOTE: THIS FORM IS ONLY TO BE USED FOR THE
ACQUISITION OF WATER INTO THE TRUST WATER RIGHT PROGRAM

(Check all that apply.)

- ☐ Lease
- ☒ Purchase
- ☐ Donation
- ☐ Other

Explain: Ecology purchased 169 shares of Fowler Ditch Association (FDA) water from Lester & Emma Roy for instream flow enhancement use in side channels on land owned by the United States of America, Bureau of Reclamation (Reclamation) Yakima River Basin Water Enhancement Project (YRBWEP) [land sold to YRBWEP by the Roys for fish and wildlife and wetland/riparian habitat enhancement use], then in the Yakima River downstream to the Yakima River's confluence with the Columbia River, and then downstream in the Columbia River to its confluence with the Pacific Ocean. In the Columbia River, this water will be managed under the State's Columbia River Basin Water Management Program, Chapter 90.90 of the Revised Code of Washington (RCW), for instream flow use. FDA joins with the Dept. of Ecology in this application to place this specific portion of the FDA water right into the State Trust Water Rights Program for instream flow enhancement use.

YAKIMA

FOR OFFICE USE ONLY

FILE No. CS4-1075CTCL @ 1 WRIA 37

DATE ACCEPTED 10/18/08 BY [Signature]

FEE \$ [Signature] REC'D 06/25/2008

CHECK No. [Signature]

SEPA: ☐ Exempt ☐ Not exempt

☒ Portion of the identified existing water right

IF FOR SEASONAL OR TEMPORARY, START DATE 04 / 01 / each year
END DATE 10 / 31 / each year

****IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS (PLEASE PRINT OR TYPE CLEARLY)****

1. Applicant Information:

APPLICANT/BUSINESS NAME Washington State Department of Ecology and Fowler Ditch Association		PHONE NO. (509) 575-2490	FAX NO. (509) 575-2809
ADDRESS (Ecology) Ecology Central Regional Office, 15 W Yakima Av, Suite 200 (Fowler Ditch Assoc.) c/o Mark Roy, Sect'y/Treas. PO Box 1191			
CITY (Ecology) Yakima (FDA) Moxee	STATE WA	ZIP CODE (Ecology) 98902-3452 (FDA) 98936-1191	

CONTACT NAME (IF DIFFERENT FROM ABOVE) (Ecology) Stan Isley, Ecology Liaison to the Reclamation YRBWEP Team (FDA) Mark Roy, Sect'y/Treas.		PHONE NO. (Ecology) (509) 575-5848, ext. 281 (FDA) (509) 452-3494	FAX NO. (Ecology) (509) 454-5611 (FDA) (509) 457-7837
ADDRESS (Ecology) c/o US Bureau of Reclamation, 1917 Marsh Road <u>Yakima WA 98901-2058</u> (FDA) PO Box 1191			
CITY (Ecology) Yakima (FDA) Moxee	STATE WA	ZIP CODE (Ecology) 98901-2058 (FDA) 98936-1191	

MAJOR CLAIMANT

6241032 616561

2. Water Right Information:

WATER RIGHT OR CLAIM NUMBER Yakima Adjudication Court Claim No. 1075		RECORDED NAME(S) Fowler Ditch Association (FDA)	
DO YOU OWN THE RIGHT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF NO, PROVIDE OWNER(S) NAME and ADDRESS: Ecology purchased a portion (169 shares) of the FDA 1892-priority water right from Lester and Emma Roy on January 7, 2003, with the FDA Board of Directors conditionally approving the sale of the FDA shares by the Roys to Ecology. Those conditions are outlined in Agreement No. C0200203 between Ecology, FDA, and the Roys, as refined and clarified by the 3-party agreement currently being finalized between Ecology, FDA, and Reclamation. The conditions include continued payment (by Reclamation) of annual share assessments for the water to FDA, continued diversion by FDA of the water from the Yakima River into the FDA canal, carriage of the water down the FDA canal to the historic Roy turnout from the FDA canal (FDA turnout #23), turnout of 90% of the water then from the FDA canal for delivery to side channels that flow across the former Roy land now owned by the United States of America, Bureau of Reclamation YRBWEP (YRBWEP land) for instream flow enhancement in those side channels and downstream in the Yakima River all the way to the Yakima River's confluence with the Columbia River, then downstream in the Columbia River. Therefore, FDA retains a continuing interest in this portion of the FDA water right acquired by Ecology, as the holder of legal title to the water, for the beneficial use of Ecology. FDA address: Fowler Ditch Association, c/o Mark Roy, Secretary/Treasurer, PO Box 1191, Moxee, WA 98936-1191 Mark Roy: (509) 452-3494 (w); (509) 945-4400 cell)			
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO ARE WATER DIVERSIONS/WITHDRAWALS OF THIS WATER RIGHT METERED OR MEASURED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IMPORTANT! PROVIDE INFORMATION SHOWING THE EXTENT OF WATER USE FOR EACH OF THE LAST FIVE YEARS			

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application.

FOR OFFICE USE ONLY	
WATER RIGHT NO. _____	FILE (contract) NO. _____

- Ecology's purchase of this FDA water right on January 7, 2003 for instream flow trust water right purposes under the Yakima Basin Trust Water Rights Program created the trust water right. RCW 90.38.020(1)(a) provides "The department may acquire water rights,... Once acquired, such rights are trust water rights."
- Yakima Basin water rights held by Ecology under Chapter 90.38 of the Revised Code of Washington (RCW) are not subject to relinquishment nor are they subject to the water right change provisions of RCW 90.03.380 [RCW 90.38.040(6)].
- The 'previous 5-year rule' must be applied to define how much of this water is placed into the State Trust Water Rights Program. [90.38.020(4)].
- Since RCW 90.03.380 does not apply to this Yakima Basin trust water right acquisition, no extent and validity analysis is required of the remainder of the FDA water rights, which were confirmed by the Yakima Adjudication Court's September 16, 1999 Conditional Final Order (CFO), and which continue to be beneficially used by FDA water users in the amounts and for the purposes authorized by the CFO.
- Since Ecology's 1/07/03 acquisition of this portion of the FDA 1892-priority water right, the water has been used as described in this application for instream flow enhancement purposes in streams and side channels on the YRBWEP land and then downstream in the Yakima River to its confluence with the Columbia River and then continuing downstream in the Columbia River.
- Reclamation installed a flow measuring device in early 2004 in FDA turnout #23 to measure flows delivered from the FDA canal, via FDA turnout #23, throughout the irrigation season each year, to satisfy Ecology's acquired portion of the FDA water right.
- The ditch rider of the Union Gap Irrigation District (UGID) Fred Bower (now Pat Andreas), who manages the FDA canal (which is the shared conveyance canal for both FDA and UGID water rights), has documented the flows delivered into FDA turnout #23 to satisfy Ecology's right and submitted records of those turnout flows to Reclamation's Yakima Field Office Hydrology Section each year since the start of the 2004 irrigation season.
- This water has been fully exercised and used for instream flow purposes since Ecology's acquisition of this water in early 2003.
- No other existing water right will be impaired or injured in any manner whatever by the exercise of this water as an instream flow enhancement trust water right. [RCW 90.38.040(5)(a)].
- Once this instream flow trust water right flows out of the Yakima River and into the Columbia River, Ecology will manage it as a block of water under the Columbia River Basin Water Management Program, Chapter 90.90 RCW.

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HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? X YES <input type="checkbox"/> NO ARE WATER DIVERSIONS/WITHDRAWALS OF THIS WATER RIGHT METERED OR MEASURED? X YES <input type="checkbox"/> NO IMPORTANT! PROVIDE INFORMATION SHOWING THE EXTENT OF WATER USE FOR EACH OF THE LAST FIVE YEARS			

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application.

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- This water has been fully exercised and used for instream flow purposes since Ecology's acquisition of this water in early 2003.
- No other existing water right will be impaired or injured in any manner whatever by the exercise of this water as an instream flow enhancement trust water right. [RCW 90.38.040(5)(a)].
- Once this instream flow trust water right flows out of the Yakima River and into the Columbia River, Ecology will manage it as a block of water under the Columbia River Basin Water Management Program, Chapter 90.90 RCW.

How is Water to be Made Available for Trust?

<input type="checkbox"/> Alteration in method of diversion	<input checked="" type="checkbox"/> Alteration in water use/ irrigated acreage
<input type="checkbox"/> Alteration in method of delivery/conveyance	<input type="checkbox"/> Nonuse of one or more points of diversion
<input type="checkbox"/> Alteration in method of water application	<input type="checkbox"/> Nonuse of all or a portion of the named water right
<input type="checkbox"/> Alteration in type of crop	<input checked="" type="checkbox"/> Other, Explain below:
Ecology's acquired portion of the FDA water right is no longer being used for irrigation, rather it is being used for instream flow enhancement.	
Name of funding source(s): Ecology's Water Acquisition Program funding.	

WATER RIGHT DESCRIPTION *

3. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Yakima River	1	SE	SE	7	13N.	19E.		
(400' N and 400' W of the SE corner of Sec. 7)								

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 7 (remarks) or as an attachment.

4. Purpose of Use:

A. Existing Use of the Water Right

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
Total FDA: Irrigation of 1919.73 acres, other agricultural purposes and stock water	22.5 cfs (4/1 - 8/31); 15.65 cfs (Sept.); 11.74 cfs (Oct.)	6768	4/1 - 10/31
8/29/1892 FDA Right:	5 cfs (4/1 - 8/31); 3.5 cfs (Sept.); 2.6 cfs (Oct.)	1673	4/1 - 10/31
Ecology's Acquired Portion of the 1892-Priority FDA Right:	0.96 cfs (4/1 - 8/31); 0.68 cfs (Sept.); 0.50cfs (Oct)	363.77	4/1 - 10/31

B. Proposed Purpose of the Trust Water Right:

DESCRIBE THE PURPOSE(S) OF USE DURING THE PERIOD OF TRUST:	
PURPOSE OF USE	ACRE-FEET/YR
As a trust water right for instream flow enhancement in the side channels that traverse United States of America, Bureau of Reclamation YRBWEP land and then downstream in the Yakima River, and then downstream in the Columbia River.	363.77

5. Place of Use:

A. Existing:

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:
- Historic: On 96.9 acres of lands, formerly owned and irrigated by Lester and Emma Roy for pasture use, now owned by the United States of America, Bureau of Reclamation YRBWEP for fish and wildlife, wetland, and riparian

* If additional space is needed, please continue on the form: Attachment for Application to Enter a Water Right into the Trust Water Right Program.

habitat enhancement purposes, those lands being within the SE¼ and the S½SW¼ of Section 4, and a portion of the N½ of Section 9, all within T. 12 N., R. 19 E.W.M., in Yakima County.

- Since Ecology's January 7, 2003 Acquisition: Instream flow enhancement use from the FDA canal diversion from the Yakima River located in the SE¼SE¼ of Section 7, T. 13 N., R. 19 E.W.M.; down the FDA canal to the historic turnout for the former Roy water at FDA turnout #23, located approximately 200 feet south of the FDA canal's intersection with State Highway No. 24, and approximately 1750 feet east and 1500 feet north of the southwest quarter corner of Section 35, being within the NE¼SW¼ of Section 35, T. 13 N., R. 19 E.W.M.; then (assuming a 10% conveyance loss from the Yakima River POD to FDA turnout #23) 90% of the Ecology water is turned out of the FDA canal for delivery to the YRBWEP land. This continual-flow turnout quantity is 0.86 cfs from April 1 through August 31, 0.61 cfs in September, and 0.45 cfs in October. This continual flow turnout water will travel west from the turnout 1750 feet in a pipeline across the N½SW¼ of Section 35, discharging into the Little Moxee Drain. Then this water will travel south 1500 feet in the drain to Postma Road, then west 2800 feet in the drain along the north side of Postma Road to Birchfield Road, then under Birchfield Road, discharging into a drainage channel/stream course that traverses southwesterly 2900 feet to the point where the stream course enters the YRBWEP land. The entry point is approximately 1350 feet westerly of the east quarter corner of Section 4, T. 12 N., R. 19 E.W.M. The water will continue to flow southwesterly through the Reclamation YRBWEP land to enhance instream flows in the streams and Yakima River side channels on the YRBWEP land, to confluences with the Yakima River in the NW¼ of Section 9 and in the E½ of Section 8, T. 12 N., R. 19 E.W.M. Then, the consumptive use portion (i.e., the historically consumed portion when the right was used for irrigation of pasture) of the Ecology-acquired portion of the FDA 1892-priority water right will be used for instream flow enhancement in the Yakima River downstream from the confluence point in Section 8, T. 12. R. 19 E.W.M., and then downstream in the Columbia River for use under the Columbia River Basin Water Management Program. On 5/20/07, Stan Isley estimated the consumptive use portion of this water right to be equivalent to a continual flow of 0.71 cfs (4/1 – 8/31); 0.61 cfs (Sept.); and 0.24 cfs (Oct.); 267.32 af/yr.

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
					Yakima & Benton Counties		

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? ☐ YES ☒ NO – IF NO, PROVIDE OWNER(S) NAME:
The United States of America, Bureau of Reclamation YRBWEP now owns the entire historic irrigated place of use where this FDA water was used by the Roys to irrigate pasture. Reclamation is Ecology's partner in implementing the YRBWEP program in the Yakima River Basin, and purchased this former Roy ranch land for fish and wildlife, wetland, and riparian habitat enhancement. Ecology purchased this portion of the FDA water right that was historically used to irrigate the former Roy land to use for instream flow enhancement water to assist Reclamation in its habitat enhancement effort on this land. Reclamation holds an easement to the pipeline across the N½SW¼ of Section 35, T. 13 N., R. 19 E.W.M. for the carriage of this water, issued by Royal Enterprises Partnership, Lester W. Roy, General Manager. The water then enters the Little Moxee Drain, which traverses public road rights of way and some private lands to its entry onto the Reclamation YRBWEP land in natural stream channels, and then discharges to lower Blue Slough and Yakima River side channels and into the Yakima River main channel and flows downstream to the Columbia River and then downstream in the Columbia River to the Pacific Ocean.

habitat enhancement purposes, those lands being within the SE¹/₄ and the S¹/₂SW¹/₄ of Section 4, and a portion of the N¹/₂ of Section 9, all within T. 12 N., R. 19 E.W.M., in Yakima County.

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¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
					<u>Yakima & Benton Counties</u>		

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? ☐ YES ☒ NO – IF NO, PROVIDE OWNER(S) NAME:
The United States of America, Bureau of Reclamation YRBWEP now owns the entire historic irrigated place of use where this FDA water was used by the Roys to irrigate pasture. Reclamation is Ecology's partner in implementing the YRBWEP program in the Yakima River Basin, and purchased this former Roy ranch land for fish and wildlife, wetland, and riparian habitat enhancement. Ecology purchased this portion of the FDA water right that was historically used to irrigate the former Roy land to use for instream flow enhancement water to assist Reclamation in its habitat enhancement effort on this land. Reclamation holds an easement to the pipeline across the N¹/₂SW¹/₄ of Section 35, T. 13 N., R. 19 E.W.M. for the carriage of this water, issued by Royal Enterprises Partnership, Lester W. Roy, General Manager. The water then enters the Little Moxee Drain, which traverses public road rights of way and some private lands to its entry onto the Reclamation YRBWEP land in natural stream channels, and then discharges to lower Blue Slough and Yakima River side channels and into the Yakima River main channel and flows downstream to the Columbia River and then downstream in the Columbia River to the Pacific Ocean.

6. Place of Use (continued)

B. Proposed:

IDENTIFY THE WATER BODY TO BE BENEFITED OR OTHER PLACE TO BE BENEFITED

See detailed description above. The water benefits and enhances flows in various water bodies from its turnout from the FDA canal at FDA turnout #23, down the Little Moxee Drain, onto the YRBWEP land in streams and lower Blue Slough and Yakima River side channels, then into the Yakima River downstream to the Columbia River, and then downstream in the Columbia River.

6. Remarks and Other Relevant Information:

Reclamation, Ecology, and FDA, are entering a three-party contract agreement that likely will be finalized, signed, and entered imminently, during the winter of 2008. This agreement will define each party's roles and responsibilities regarding ongoing management and use of this portion of the FDA 1892-priority water right by Ecology and Reclamation for instream flow enhancement purposes in the State Trust Water Rights Program.

Certain applications may incur a Real Estate Excise Tax liability for the seller of the water rights. The Department of Revenue has requested notification of potential taxable water right related actions and therefore may be provided with a copy of this request.

Please contact the State Department of Revenue for further information. The phone number is (360) 570-3265. The address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477.

7. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I hereby grant staff from the Department of Ecology access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

Man Desmarais 4, 9, 08
President (Applicant) Fowler Ditch Assoc (Date)

Man Desmarais 4, 9, 08
President (Water Right Holder) Fowler Ditch Assoc (Date)

Dan Winkler 5, 23, 08
(Land Owner(s) of Existing Place of Use) (Date)

IMPORTANT! APPLICATION FILING INFORMATION IS PROVIDED ON THE NEXT PAGE.

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

☐ ADDITIONAL SIGNATURES REQUIRED ☐ SECTION _____ IS INCOMPLETE

☐ OTHER/EXPLANATION: _____

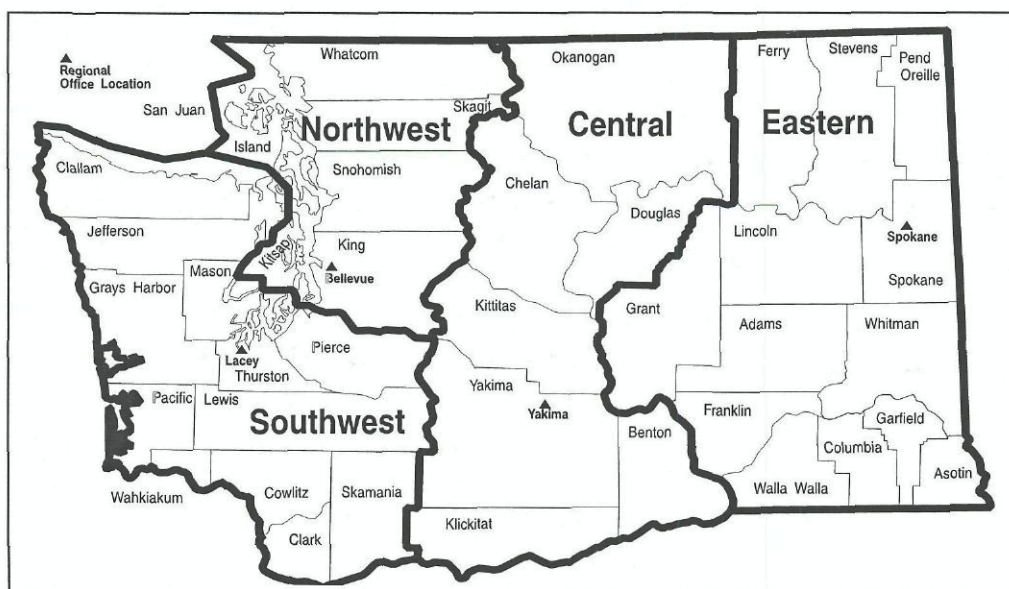
STAFF: _____ **DATE:** ____/____/____

EC

Into
gram

IMPORTANT!

Submit your application to Ecology at the regional office for the area of proposed or existing water use. Below is a map of the State of Washington, with outlines of the four Ecology regional offices. If you have questions about your application, contact the Water Resources program at the regional office in which your project is located.



Department of Ecology
Central Regional Office
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902
Telephone: (509) 575-2490

Department of Ecology
Eastern Regional Office
N. 4601 Monroe, Suite 202
Spokane, WA 99205-1295
Telephone: (509) 329-3400

Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008-5452
Telephone: (425) 649-7000

Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
Telephone: (360) 407-6300

If you need assistance in the application process or those needing this application in an alternate format, please call the Water Resources Program at (360) 407-6600 or 800-833-6388 (TTY).